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PLAN Loving Adoptions Now, Inc.

"Joining children and families through adoption," since 1975.

December 1, 2003

U.S. Department of State, CA/OCS/PRI
Adoption Regulations Docket Room
SA-29
2201 C Street, NW
Washington, D. C. 20520

To Whom It May Concern:

We appreciate the opportunity to share with you our concerns regarding the proposed rules (22 CFR Parts 96 and 98) for the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption. We have also submitted comments via Joint Council On Intercountry Adoptions as part of a group response. We are aware of comments submitted on a point-by-point basis from other respected agencies such as World Association for Children and Parents, and believe they gave an astute depiction of the concerns that agencies are facing under the proposed rules referred to above. In this letter we would like to share with you in simple terms the concerns of our agency starting with a brief biography.

PLAN Loving Adoptions Now, Inc. is a private nonprofit licensed adoption agency placing children for adoption since 1975. Our roots extend back to the time when the Vietnam War was coming to an end – our first children placed were from Operation Airlift. Over the years we have remained active and progressive in helping orphan children in the United States as well as many countries around the world.

PLAN was established by a group of adoptive parents (including Anna Scott, PLAN's Executive Director and adoptive mother of 16 children) who bonded together for purposes of support, education, and humanitarian work and formed a corporation in 1973. In 1975, this same group applied for and was granted an adoption license. It is important to note the agency was not started by "professionals" but by lay people who wanted a new, more innovative and user-friendly approach to adoption. Preadoption education was and is the cornerstone of our agency. PLAN's philosophy is that if you educate prospective adoptive parents, they can decide for themselves if adoption is right for their family and what child would best fit into their family. Part of the education process is helping families understand the risks involved in any adoption, domestic or international. In addition to the preadoption classes, families are provided with additional country-specific education materials. For many years PLAN has prided itself on being a parent-led family-friendly agency in relation to the services we provide to adoptive parents. We have worked with thousands of wonderful adoptive parents in uniting children and families in adoption – this is our mission!

In the past five years or so we have seen the atmosphere changing – prospective adoptive parents are less focused on the needs of the child and more focused on their own needs – hence the desire to find the "perfect" child to replace the biological child they dreamed of having. As an agency we have experienced more "threats" of litigation when the adoption does not proceed as planned, (countries closing or changing their adoption programs unexpectedly, civil war, etc.). Quite frankly, we have been "forced" into a position of "guarding" our backside. To quote a comment from Lillian Thogersen in her comments regarding: The Liability and Risk Allocation Provisions (96.45(c) and 96.46 (c)): "The scope of risk adoption agencies face in our litigious society far exceeds the cost of reimbursing adoption fees." To increase this risk by allowing adoptive parents a broader scope for litigation will exacerbate an already difficult problem. In the past, lawsuits were a rarity in the adoption field - these days there are firms who specialize in suing adoption agencies especially in cases where the child has previously unknown/undiagnosed medical conditions. As an agency, we are well aware of the risk we take in placing each and every child. We no longer present children as "healthy" rather as "no known medical needs," reinforcing to prospective families that we as an agency can not guarantee the health or medical information on a child especially one that is foreign born,

possibly abandoned with no background information. Medical care/testing in foreign countries is sketchy at best, and simply legislating agencies to be responsible for these services will not make them more reliable, nor is it realistic to believe this will happen.

In an effort to keep fees as low as possible to adoptive families, in the first years of our agency, we did not carry professional insurance but have found it absolutely necessary these past several years. The problem comes in finding a market for this type of insurance and at an affordable premium. Our rates have been raised every year, sometimes as much as 40% with virtually no prior notice. We have recently learned our insurer is no longer insuring for our market and we are forced once again in the next 60 days to find a new insurer, then hope and pray it is affordable. The proposed requirement of one million dollar insurance provision per occurrence makes insurance nearly impossible to obtain, nor in our experience is it necessary - to date we have had no lawsuits related to our work in international adoption.

We share all this with you so that you may have some understanding of the situation as it exists today even before the proposed Hague Adoption Convention regulations. In the past, agencies and adoptive parents have shared the responsibility for the risks involved in international adoption. Agencies are well aware that even if an adoptive family signs a liability waiver, if the agency perpetrates fraud or an egregious act, no waiver is going to protect the agency. On the other hand, agencies must be able to protect themselves against wrongful adoption claims.

If agencies are mandated to be responsible as the "primary" agency for all facets of the adoption placements in the United States and in foreign countries, insurance coverage, in our experience, will be virtually impossible to obtain thereby effectively ending foreign adoption. If this is the goal of such policy then it was well crafted! Also no agency can control the factors that lead to the need for foreign adoption in the first place - poverty, neglect, social problems, political upheaval, etc. Agencies can only do the best they can in working with reputable contacts/agencies and have a contract/working agreement of standards and expectations. Our agency is licensed with the government in such countries as: Peru, Colombia, India, and China. In African countries, we have working agreements with in-country organizations whose work includes not only adoption but also other types of humanitarian services.

The outcome of sections 96.45 and 96.46 as we see it is accredited agencies will be forced to limit their relationships with other "supervised" agencies, making services to families more difficult to obtain and more expensive. It is highly unlikely that insurance companies will insure an agency that has legal responsibility for personnel other than their own employees, or such coverage would be unaffordable for most if not all agencies.

We urge you to reconsider the effect that such policies would have on the very people the Hague Convention pledges to support and protect.

Respectfully submitted,



Dick Osborne
Board President



Ann Scott
Executive Director